

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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FILED  
EPA REGION VIII  
TREASURY CLERK

IN THE MATTER OF:  
Moline Street PCB Site  
Aurora, Adams County, Colorado

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION BY  
BONA FIDE PROSPECTIVE  
PURCHASER

Hi-Tec Plastics, Inc.

U.S. EPA Region 8  
CERCLA Docket No. **CERCLA-08-2014-0001**

Respondent

Proceeding Under Sections 104, 106(a), 107  
and 122 of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, as amended, 42 U.S.C. §§  
9604, 9606(a), 9607 and 9622

## **I. INTRODUCTION**

1. This Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser (Agreement) is voluntarily entered into by and between the United States on behalf of the Environmental Protection Agency (EPA) and Hi-Tec Plastics, Inc. and related parties defined below (Purchaser) (collectively, "Parties") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 *et seq.* Under this Agreement, Purchaser agrees to perform a portion of the removal action at the property located at 3555 Moline Street, Aurora, Colorado 80010. The remainder portion of the removal action selected will be performed by the Dow Chemical Company (Dow) and is addressed in a separate administrative order on consent.

## **II. JURISDICTION AND GENERAL PROVISIONS**

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Section 104, 106, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated by EPA delegation 14-14-C to the undersigned Regional officials.

3. The Parties agree that the United States District Court for the District of Colorado will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Agreement.

4. EPA has notified the State of Colorado (State) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5. The Purchaser represents that it is a bona fide prospective purchaser (BFPP) as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the removal action at the Site, and the risk of claims under CERCLA being asserted against Purchaser notwithstanding Section 107(r)(1) as a consequence of Purchaser's activities at the Site pursuant to this Agreement, one of the purposes of this Agreement is to resolve, subject to the reservations and limitations contained in Section XVII (Reservation of Rights by United States), any potential liability of Purchaser for the Existing Contamination as defined by Paragraph 10 below.

6. The resolution of this potential liability, in exchange for Purchaser's performance of the Work is in the public interest.

7. EPA and Purchaser recognize that this Settlement Agreement has been negotiated in good faith. Purchaser agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

### **III. PARTIES BOUND**

8. This Settlement Agreement applies to and is binding upon EPA and upon Purchaser and its successors and assigns. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's responsibilities under this Settlement Agreement.

9. Purchaser shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement, and, where appropriate, receive a copy of this Settlement Agreement. Purchaser shall be responsible for any noncompliance with this Settlement Agreement.

### **IV. DEFINITIONS**

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

"Action Memorandum" shall mean the Action Memorandum relating to the Site signed on January 14, 2014, by the Regional Administrator, EPA Region 8, or his delegate, and all attachments thereto. The Action Memorandum is attached hereto as Appendix A.

"BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal Holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXV.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.



“Existing Contamination” shall mean:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

“Future Response Costs” shall mean all direct and indirect costs incurred by EPA or the United States after the Effective Date in monitoring and supervising Purchaser’s performance of the Work to determine whether such performance is consistent with the requirements of this Settlement Agreement, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Settlement Agreement, as well as costs incurred in overseeing implementation of the Work.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“OSC” shall mean the On-Scene Coordinator as defined in 40 C.F.R. § 300.5.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Parties” shall mean EPA and Purchaser.

“Property” shall mean the parcel of real property located at 3555 Moline Street, Aurora, Colorado, which is described in Appendix B of this Settlement Agreement.

“Purchaser” shall mean Hi-Tec Plastics, Inc., and its affiliates Hi-Tec Plastics Recycling, Inc., 3555 Moline Street LLC, and Argent K, Inc., and Louis Hard, to the extent these persons or entities own or operate the Property.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXIII). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

“Site” shall mean the Moline Street PCB Site encompassing approximately 2 acres, located at 3555 Moline Street, in Aurora, Adams County, Colorado, and depicted generally on the map attached as Appendix C. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants have been released, deposited, stored, disposed of, or placed, or otherwise come to be located.

“SOW” shall mean the Statement of Work attached hereto as Appendix D for the implementation of the response action set forth in the Action Memorandum by the Respondent and Purchaser and any modifications made in accordance with this Settlement Agreement.

“Supervising Contractor” shall mean the principal contractor retained by Purchaser to supervise and direct the implementation of the Work agreed to in this Settlement Agreement and to sign and approve the Final Report submitted concerning such Work.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous material under CRS § 25-7-101 *et seq.*

“Work” shall mean all removal activities Purchaser is required to perform under this Settlement Agreement.



## **V. FINDINGS OF FACT**

11. The USA-Magnesium Extrusion Fabrication Division of Dow operated a magnesium extrusion facility at the Site from 1969 until 1998, under a lease agreement with Samuel Sokoloff, et al, a Colorado Limited Partnership.

12. The business operations were purchased by Timminco Corporation (Timminco) in 1998. In 2007, Aurora Smith RD Ventures, LLC purchased the Property. Timminco continued to operate the magnesium extrusion facility until 2009.

13. From 2009 through 2011, the Property remained unoccupied. In January 2012, the Purchaser leased the Property from Aurora Smith RD Ventures, LLC, for plastic recycling operations.

14. During Dow's operation at the Property, there was at least one reportable spill of polychlorinated biphenyls (PCBs).

15. Sampling conducted in 2012 and 2013 found the highest levels of PCBs in soils at the Site within a building and a secondary outer structure. The highest levels range from 762 ppm to 9,240 ppm at depths of 1.5 to 4 feet. The highest concentrations in concrete range from 563 ppm to 3,180 ppm at depths of 0.5 inches to 2 inches.

16. The recommended soil action level for PCBs and industrial land use is 10-25 ppm pursuant to EPA's Guide on Remedial Actions at Superfund Sites with PCB Contamination (EPA Publication No. 9355.4OIFS, August 1990).

17. The Site is in an industrial area of Aurora and Purchaser runs a plastics recycling business on the property adjacent to the north of the Property. Purchaser's workers are in close proximity to the contaminated building and soils and could come into contact with hazardous substances despite existing safety protocols. The Site is .3 miles from a wildlife refuge, and .7 miles from a residential neighborhood. Trespass at the Property is possible because there is an unsecured gate during the day.

18. Exposure to PCBs has been shown to cause cancer in animals, and can cause negative effects in humans' reproductive, neurological, and immune systems. Humans or animals at or around the Site may come into contact with PCBs via inhalation of windblown PCB laden soils or dust, or through dermal contact. Breathing the PCB dust or coming into contact with the PCB laden soils may cause adverse health effects in humans at the Site and animals around the Site.

## **VI. DETERMINATIONS**

19. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Moline Street PCB Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Purchaser is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The Work is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VII. SETTLEMENT AGREEMENT**

20. In consideration of and in exchange for the United States' Covenant Not to Sue in Section XVI, Purchaser agrees to comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## **VIII. WORK TO BE PERFORMED**

21. Purchaser shall perform the work described in sections II and VII of the SOW attached hereto as Appendix D. Purchaser shall perform all actions required by this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations, except as otherwise provided by law including in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

### **22. Work Plan and Implementation**

a. Within 30 days after the Effective Date, Purchaser shall submit to EPA for approval a draft Work Plan for performing the portion of the removal action for which it is responsible generally described in the SOW. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Purchaser shall submit a revised draft Work



Plan within 15 days of receipt of EPA's notification of the required revisions. Purchaser shall implement the Work Plan as approved or modified in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modification, or modified by EPA, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Purchaser shall not commence any Work except in conformance with the terms of this Settlement Agreement. Purchaser shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval or modification pursuant to Paragraph 22.b.

23. Health and Safety Plan. Within 30 days after the Effective Date, Purchaser shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Purchaser shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

#### 24. Quality Assurance and Sampling

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Purchaser shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Purchaser shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Purchaser shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans" (QA/R-2) (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Purchaser shall have a laboratory that meets the requirements of Paragraph 24.a above analyze samples submitted by EPA for QA monitoring. Purchaser shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Purchaser shall allow EPA or its authorized representatives to take split and/or duplicate samples. Purchaser shall notify EPA not less than 5 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall



have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Purchaser to take split or duplicate samples of any samples it takes as part of its oversight of Purchaser's implementation of the Work.

25. Post-Removal Site Control. In accordance with the Work Plan Schedule, or as otherwise directed by EPA, Purchaser shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and considering OSWER Directive No. 9360.2-02. Upon EPA approval, Purchaser shall implement such controls and shall provide EPA with documentation of all such post-removal site control arrangements.

26. Reporting.

a. Purchaser shall submit a written progress report to EPA concerning actions undertaken pursuant to this Agreement every 30<sup>th</sup> day after the date of receipt of EPA's approval of the Work Plan until completion of the Work, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Purchaser shall submit 2 copies of all plans, reports or other submissions required by this Agreement, the SOW, or any approved work plan. Upon request by EPA, Purchaser shall submit such documents in electronic form to be specified by EPA.

27. Final Report. Within thirty (30) days after completion of all Work required by this Agreement, Purchaser shall submit for EPA review and approval in accordance with Section XXIV (Notice of Completion) a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal (e.g. manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by the Supervising Contractor who supervised or directed the preparation of said report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## 28. Off-Site Shipments.

a. Purchaser may ship Waste Material from the Site to an off-Site facility only if it verifies, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

b. Purchaser may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Purchaser also shall notify the state environmental official referenced above and the EPA On-Scene Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Purchaser shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

## IX. AUTHORITY OF THE ON-SCENE COORDINATOR

29. The OSC shall be responsible for overseeing Purchaser's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## X. PAYMENT OF FUTURE RESPONSE COSTS

### 30. Payment of Future Response Costs Upon Receipt of Periodic Bills.

a. Purchaser shall pay EPA five percent (5%) of all Future Response Costs not inconsistent with the NCP; the balance of the Future Response Costs will be paid by Dow. On a periodic basis, EPA will send Purchaser a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Purchaser shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds ("EFT") Transfer to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045



Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number A898 and the EPA docket number for this action.

b. In the event that a payment for Future Response Costs is not made within sixty (60) days of Purchaser's receipt of a bill, Purchaser shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.

c. The total amount to be paid by Purchaser pursuant to Paragraph 30 shall be deposited by EPA in the Moline PCB Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

1. At the time of each payment, Purchaser shall send notice that such payment has been made to Enforcement Specialist, Moline PCB Site (8ENF-RC), EPA Region 8, 1595 Wynkoop St. Denver, CO 80202, and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A898 and the EPA docket number for this action.

31. Pursuant to Section XIII (Dispute Resolution), Purchaser may dispute all or part of a bill for Future Response Costs if Purchaser determines that EPA has made a mathematical error or included a cost item that is outside the definition of Future Response Costs, or if Purchaser believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Purchaser shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 30 on or before the due date. Within the same time period, Purchaser shall pay the full amount of the contested costs into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation ("FDIC"). Purchaser shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 34. Purchaser shall ensure that the prevailing party in the dispute receives the amount upon which it prevailed from the escrow funds plus any interest accrued within 20 calendar days after the dispute is resolved.

## **XI. ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS**

32. Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property owned or controlled by

Purchaser to which access is required for the implementation of response actions at the Site. EPA agrees to provide reasonable notice to Purchaser of the timing of response actions to be undertaken at the Property and other areas owned or controlled by Purchaser. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and other authorities.

33. Purchaser shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Adams County, Colorado, which shall provide notice to all successors-in-title that the Property is part of the Site. Purchaser shall record the notice within thirty (30) days of EPA's approval of the notice. Purchaser shall provide EPA a certified copy of the recorded notice within thirty (30) days of recording such notice.

34. Purchaser shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action.

35. For so long as Purchaser is an owner or operator of the Property, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

36. Upon sale or other conveyance of the Property or any part thereof, Purchaser shall require that each grantee, transferee, or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

37. Purchaser shall provide a copy of this Settlement Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date as well as a summary of the contamination on the Property and a summary of the removal action that will take place.

## **XII. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION**

38. Purchaser shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site in Purchaser's possession, and shall submit them to EPA upon completion of the Work required by this Settlement Agreement, or earlier if requested by EPA.



39. Purchaser may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by Purchaser. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of procedures set forth at, 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Purchaser.

### **XIII. DISPUTE RESOLUTION**

40. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement Agreement, EPA shall notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to Paragraph 41.

41. If Purchaser disputes EPA's position with respect to Purchaser's compliance with this Settlement Agreement or objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, Purchaser shall notify EPA in writing of its position unless the dispute has been resolved informally. EPA may reply, in writing, to Purchaser's position within thirty (30) days of receipt of Purchaser's notice. EPA and Purchaser shall have sixty (60) days from EPA's receipt of Purchaser's written statement of position to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing by EPA.

42. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the supervisory level or higher will review the dispute on the basis of the parties' written statements of position and issue a written decision to Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Purchaser's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

### **XIV. FORCE MAJEURE**

43. Purchaser agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a



*force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of the Purchaser, or any entity controlled by Purchaser, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Purchaser's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the work or increased cost of performance or a failure to attain performance standards/action levels set forth in the Action Memorandum.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Purchaser shall notify EPA orally within 24 hours of when Purchaser first knew that the event might cause a delay. Within seven (7) days thereafter, Purchaser shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Purchaser, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Purchaser from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

45. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

46. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), Purchaser shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 44 and 45 above. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement Agreement.



## **XV. CERTIFICATION**

47. By entering into this Settlement Agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

## **XVI. COVENANT NOT TO SUE BY UNITED STATES**

48. In consideration of the actions that will be performed and the payments that will be made by Purchaser under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Purchaser pursuant to Section 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs. This covenant not to sue extends only to Purchaser and does not extend to any other person.

## **XVII. RESERVATION OF RIGHTS BY UNITED STATES**

49. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or the United States from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary.

50. The covenant not to sue set forth in Section XVI above does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

- a. liability for failure by Purchaser to meet a requirement of this Settlement Agreement;
- b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Workplan, the Work, or otherwise ordered by EPA;

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;

f. liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

51. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of 42 U.S.C. § 9601(40).

52. Work Takeover. In the event EPA determines that Purchaser has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Prior to taking over the Work, EPA will issue written notice to Purchaser specifying the grounds upon which such notice was issued and providing Purchaser with seven (7) days within which to remedy the circumstances giving rise to EPA's issuance of the notice. Purchaser may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

### **XVIII. COVENANT NOT TO SUE BY PURCHASER**

53. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination, the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;



b. Any claim arising out of response actions, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

54. Purchaser reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Purchaser's plans, reports, other deliverables, or activities.

55. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

## **XIX. CONTRIBUTION**

56. Nothing in this Settlement Agreement precludes the United States or Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

57. In the event of a suit or claim for contribution brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC), the Parties agree that this Settlement Agreement shall then constitute an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Purchaser would be entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.



58. In the event Purchaser were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Purchaser has resolved its liability for all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

59. Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

60. Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify the United States in writing within 10 days of service of the complaint on it. In addition, Purchaser agrees that it will notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

## **XX. RELEASE AND WAIVER OF LIEN(S)**

61. Subject to the Reservation of Rights in Section XVII of this Settlement Agreement, upon satisfactory completion of the Work specified in Section VIII (Work to be Performed) and payment of Future Response Costs due under Section X, EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.

## **XXI. INDEMNIFICATION**

62. Purchaser shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Purchaser agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, Purchaser's officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Purchaser's behalf or under Purchaser's control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement Agreement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.



63. The United States shall give Purchaser notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Purchaser prior to settling such claim and consider any input Purchaser provides with respect to such settlement.

64. Purchaser waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## **XXII. MODIFICATION**

65. The OSC may make minor modifications to any plan, schedule or the SOW in writing or by oral direction. Any such oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

66. If Purchaser seeks permission to deviate from any approved work plan or schedule or SOW, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the OSC.

67. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

## **XXIII. APPENDICES**

68. The following appendices are attached to and incorporated into this Settlement Agreement.

- a. Action Memorandum
- b. Property Description
- c. Map of Site
- d. SOW

## **XXIV. NOTICE OF COMPLETION**

69. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any

continuing obligations required by this Settlement Agreement, including continued compliance with CERCLA Section 101(40) with respect to the Property in accordance with Paragraph 5 of this Agreement, post-removal site controls, record retention, and compliance with institutional controls, EPA will provide written notice to Purchaser. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

#### **XXV. EFFECTIVE DATE**

70. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to Purchaser that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

#### **XXVI. DISCLAIMER**

71. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

#### **XXVII. PAYMENT OF COSTS**

72. If Purchaser fails to comply with the terms of this Settlement Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement Agreement or otherwise obtain compliance.

#### **XXVIII. NOTICES AND SUBMISSIONS**

73. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or email.

Submissions to Purchaser shall be addressed to:

Louis Hard  
President  
Hi-Tec Plastics, Inc.  
11380 East Smith Road  
Aurora, CO 80010  
[louishard@comcast.net](mailto:louishard@comcast.net)



With copies to:

Jenny McClister, Attorney  
McClister Law LLC  
14143 Denver West Parkway, Suite 100  
Golden, CO 80401  
[jenny@mcclisterlaw.com](mailto:jenny@mcclisterlaw.com)

Susan Borden, Senior Geologist  
LT Environmental, Inc.  
4600 W. 60<sup>th</sup> Ave.  
Arvada, CO 80003  
[sborden@ltenv.com](mailto:sborden@ltenv.com)

John Goutell, Attorney  
The Minerva  
9457 South University Blvd, #528  
Highlands Ranch, CO 80126  
[john@theminerva.com](mailto:john@theminerva.com)

Submissions to EPA shall be addressed to:

OSC- Moline PCB Site 8EPR-ER  
EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202

With a copy to:

Enforcement Attorney- Moline PCB Site 8ENF-L  
EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202

#### **XXIX. PUBLIC COMMENT**

74. This Settlement Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

The undersigned representatives of Purchaser certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

IT IS SO AGREED:

BY:

Louis Hard - President

1-23-14

Name (Purchaser)

Date

Hi-Tec Plastics, Inc.

Louis Hard VP

1-23-14

Name (Purchaser)

Date

Hi-Tec Plastics Recycling, Inc.

Louis Hard Mgr

1-23-14

Name (Purchaser)

Date

3555 Moline Street LLC

Louis Hard President

1-23-14

Name (Purchaser)

Date

Argent K, Inc.

Louis Hard

1-23-14

Name (Purchaser)

Date

Louis Hard



IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



1/24/14

Andrea Madigan  
CERCLA Supervisory Attorney  
CERCLA Response and Recovery Unit  
U.S. EPA Region 8

Date



1/24/14

Kelcey Land, Director  
CERCLA and RCRA Technical Enforcement Program  
U.S. EPA Region 8

Date



1/23/2014

David Ostrander, Director  
Emergency Response and Preparedness Program  
U.S. EPA Region 8

Date